

REMARKS

In the Office Action dated August 11, 2003, claims 12-23 were rejected under 35 U.S.C. § 102 over U.S. Patent No. 6,145,088 (Stevens); claims 1-10 were rejected under 35 U.S.C. § 103 over Stevens in view of U.S. Patent No. 6,195,695 (Cheston); and claim 11 was rejected under § 103 over Stevens in view of Cheston and U.S. Patent No. 5,469,573 (McGill).

The obviousness rejection of claim 1 is first addressed. It is respectfully submitted that there is no motivation or suggestion to combine the teachings of Stevens and Cheston. Cheston explicitly teaches away from the combination of Stevens and Cheston in the manner proposed by the Office Action. Stevens proposes a fault recovery mechanism that involves the local storage of two copies of an application and operating system. If the working copy of the application and operating system is defective, then the backup copy of the application operating system is used in the system. As noted in Cheston, the recovery from corrupted application and operating system is performed *without having to download a new copy of the executable application and operating system using some of the limited communication channel capacity* in the process. Cheston, 2:16-23. Cheston states that obtaining a copy of the application program and operating system from a server after the application and operating system have become corrupted and crashed consumes communication resources and bandwidth, which was noted as a disadvantage and limitation of prior art systems. Cheston, 1:47-50. On the other hand, Stevens teaches the use of a network to download data from a remote data recovery facility. The teachings of Stevens and Cheston are at odds with each other, and therefore, a person of ordinary skill in the art would not have been motivated to combine Stevens and Cheston in the manner proposed by the Office Action. As stated by the MPEP, where the references teach away from their combination, there can be no suggestion or motivation to combine.

Also, the hypothetical combination of Stevens and Cheston does not teach or suggest every element of claim 1. The Office Action conceded that Stevens does not disclose a storage element containing a flag to indicate if a fault has occurred with a first operational element, and a backup device to enable access of the network through an interface in response to the flag indicating failure of the first operational element. The

Office Action pointed to elements 55 and 60 in Figure 2 of Cheston as teaching a storage element containing such a flag. However, that is simply not the case, as element 55 of Figure 2 refers to testing to determine whether the working copy of the application and operating system is corrupted, and if so, to make the backup copy the working copy and to make another copy (a third copy) the backup copy (at block 60). Cheston, 4:17-49. There is no indication within Cheston of a storage element containing a flag to indicate if a fault has occurred with a first operational element, and a backup device to enable access of a network through an interface in response to the flag indicating failure of the first operational element. Therefore, even if they can be combined, the hypothetical combination of Stevens and Cheston does not teach or suggest each and every element of claim 1.

With respect to claim 12, Stevens does not disclose retrieving data over a network, with the data comprising an image containing user data and an operating system, and recovering the system using the image.

With respect to independent claim 17, Stevens does not disclose retrieving data to recover a system over a network, scanning (in response to a fault) a storage device to identify portions of the storage device that are defective, and storing the retrieved data in portions of the storage device other than the portions that are defective.

With respect to independent claim 18, Stevens does not disclose using a backup storage device to enable communications over a network to retrieve image data to recover the system, where the image data comprises user data and an operating system.


With respect to independent claim 21, Stevens does not disclose a routine to identify portions of a main storage device that are defective, and to store the retrieved data in portions of the main storage device that are not defective.

Dependent claims, including the newly added dependent claims, are allowable for at least the same reasons as corresponding independent claims. Allowance of all claims is respectfully requested. The Commissioner is authorized to charge any additional fees, including extension of time fees, and/or credit any overpayment to Deposit Account No. 20-1504 (MCT.0133US).

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Respectfully submitted,

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